

WHAT YOU NEED TO KNOW BEFORE YOU FILE OR RESPOND TO A MOTION REGARDING CUSTODY

There can be many complex legal issues involved in a custody case. If you choose to proceed without the assistance of an attorney, you should have the following in mind when completing your motion or response and when you are preparing for a hearing.

In all cases, the moving party (the person filing the motion) has the burden of proof to show that it is in the child's best interest to change custody.

If a motion to modify custody has been filed, in addition to having the burden of proof, the moving party must establish a change of circumstances or proper cause before the court will review all of the evidence and consider the factors in the Child Custody Act.

The court must determine whether a custodial environment has been established prior to determining what burden of proof (either preponderance or clear and convincing) the moving party must demonstrate.

According to MCLA 722.27(1)(c), custodial environment is defined as follows:

“The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.”

If the court determines that there is no custodial environment established, the moving party's burden of proof will be the preponderance of the evidence. This means that the weight of the evidence that must be provided to the court will have to be slightly greater than equal.

If the court determines that a custodial environment does exist, the moving party will have to present clear and convincing evidence to the court. This is a much higher burden of proof than preponderance.

MICHIGAN CHILD CUSTODY ACT OF 1970 MCL 722.23

- A.** The love, affection and other emotional ties existing between the parties involved and the child.
- B.** The capacity and disposition of the parties involved to give the child love, affection and guidance and the continuation of the educating and raising of the child in its religion or creed, if any.
- C.** The capacity and disposition of the parties involved to provide the child with food, clothing, medical care and other remedial care recognized and permitted under the laws of this state in place of medical care, and other remedial needs.
- D.** The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- E.** The permanence, as a family unit, of the existing or proposed custodial home or homes.
- F.** The moral fitness of the parties.
- G.** The mental and physical health of the parties.
- H.** The home, school and community record of the child.
- I.** The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.
- J.** The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
- K.** Domestic violence, regardless of whether the violence was directed against, or witnessed by the child.
- L.** Any other factor considered by the court to be of relevance to a particular child custody dispute.